

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:
Michael GABRIEL et al.

Examiner: Dennis Y. Myint

For: MEDIA CONTENT SEARCHING AND
NOTIFICATION

Art Unit: 2162

Filed: September 29, 2003

Serial No.: 10/674,680

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office via the Office electronic filing system on *January 25, 2010*.

Signature: /Aaron Grunberger/
Aaron Grunberger (Reg. No. 59,210)

REPLY BRIEF UNDER 37 C.F.R. § 41.41

SIR:

Appellants submit the present Reply Brief in response to the Examiner's Answer dated November 24, 2009.

Claims 1 to 27, and 29 have been finally rejected.

For the reasons set forth in the Appeal Brief and those set forth below, it is again respectfully submitted that the final rejections of claims 1 to 27, and 29 should be reversed.

Appellants incorporate herein arguments previously presented in the Appeal Brief dated August 18, 2009 ("the Appeal Brief"). In addition, the following comments are presented to further highlight the differences between the claimed subject matter and the applied prior art references.

Claims 1 to 25, and 27 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of U.S. Patent Application Publication No. 2003/0208767 (“Williamson et al.”) and U.S. Patent Application Publication No. 2004/0003097 (“Willis et al.”). It is respectfully submitted that the combination of Williamson et al. and Willis et al. does not render unpatentable any of claims 1 to 25, and 27 for at least the following reasons.

As noted in the Appeal Brief, to reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993).

In the Examiner’s Answer, the Examiner notes that once a *prima facie* case of obviousness is established, it is incumbent upon Appellants to go forward with objective evidence of non-obviousness. Examiner’s Answer, page 40. However, for the reasons explained in the Appeal Brief and below, the criteria necessary for establishing the *prima facie* case of obviousness have not been satisfied.

As further noted in the Appeal Brief, one of the criteria which must be satisfied for establishing the *prima facie* case of obviousness is that there must be some suggestion or motivation to modify or combine reference teachings. With respect to this requirement, the Examiner, at pages 40 to 41 of the Examiner’s Answer, repeats the argument presented at pages 21 to 22 of the Final Office Action. However, as explained in the Appeal Brief and below, even if the features of Williamson et al. and Willis et al. are combined, the combined features would still not disclose or suggest all of the features of any of the claims.

Claims 1, 18, and 19 essentially recite, *inter alia*, the following:

. . . receiving . . . a user profile which identifies preferred media distribution sources . . . searching . . . a plurality of media distribution source types for media content based on the at least one search criteria and the user profile . . . generating, . . . from results of the searching, a schedule including scheduling information regarding the media content; and displaying the schedule to the user.

Thus, claims 1, 18, and 19 provide novel and counter-intuitive features in which, in response to a search request, a schedule is generated including scheduling information regarding media content from a plurality of media distribution source types, which, it is noted, often are scheduled in different manners. For example, movie theatre schedules include gaps as compared to TV program schedules which are, for the most part, continuous. Neither Williamson et al. nor Willis et al., whether considered alone or in

combination, disclose or suggest these features including generating a schedule as provided for in the context of claims 1, 18, and 19.

In the Appeal Brief, Appellants noted that the Examiner admits in the Final Office Action that Williamson et al. do not disclose searching a plurality of media distribution source types for media content based on search criteria and a user profile, and instead refers to Willis et al. as assertedly disclosing searching for content from a plurality of media distribution source types.

In the Examiner's Answer, the Examiner takes exception to the above remark, stating "Examiner objects to Appellant's misquotation of Examiner's statement in the Final Office Action." To clarify, Appellants did not quote the Examiner, but rather paraphrased the Examiner, and did so correctly. In this regard, the Examiner did admit that "Williamson does not explicitly teach the limitations: 'a plurality of distribution source types.'" Final Office Action, page 19. Since Williamson et al. do not disclose a plurality of media distribution source types, Williamson et al. therefore certainly do not disclose searching a plurality of media distribution source types etc. This is the basis for Appellants' paraphrase of the Examiner's remarks. Appellants apologize for any confusion that arose from Appellants' statement.

In the Examiner's Answer, the Examiner next explains why the Examiner believes Williamson et al. disclose searching for media content based on at least one search criteria and a user profile. Appellants note that the issue presented by Appellants is not whether Williamson et al. (alone or in combination with Willis et al.) disclose searching for media content based on search criteria and a user profile. Rather, the issue is that the references do not disclose or suggest such searching where the searching is of a plurality of media distribution source types. This issue is not addressed by the Examiner's argument. Specifically, the Examiner refers to paragraph 84 of Williamson et al., which merely refers to a GUI in which a user may view programs that have been reserved for the user, where the reservation may have been done by the user or automatically, and where the programs may have already been received or are scheduled to be received. The cited paragraph does not refer to searching a plurality of media distribution source types.

(Incidentally, since the Examiner did bring up the further issue, it is further noted that cited paragraph 84 also does not disclose searching based on search criteria and a user profile. Instead, the paragraph merely describes a GUI in which a user can view, sort, or otherwise manage programs which the user has reserved or which have been automatically reserved. While the sort may be performed based on selected criteria, the sort does not

disclose searching for media content, but rather merely provides a particular set of content in a particular order. While paragraph 84 also states that “the My Shows GUI enables a user to find . . . programs,” it does not explain how such a find is performed, and does not disclose that it is based on a search criteria and the profile, as required by the present claims. Indeed, the “find” apparently refers merely to the ability of the user to view the reserved programs of the My Shows GUI.)

As for Willis et al., Willis et al. provide a portal type system in which user preferences are used for filtering articles from different sources. The articles are provided to the user in a portal setting in which the different article categories are presented in different frames. In order to perform the filtering, a content generator generates for each obtained article a new version including searchable metadata. Subsequently, a content based router 130 filters the articles in accordance with user preferences and accordingly displays the articles in the portal. *See* Willis et al., e.g., paragraphs 85-96. Willis et al. do not disclose or suggest **generating a schedule** based on the filtered articles. Further, Willis et al. do not disclose providing its portal information **responsive to search criteria**. Instead, obtained articles are sorted based on a set of user preferences. The different articles are determined to be relevant based on different ones of the set of preferences and are provided without regard to particular search criteria.

With respect to Appellants’ argument that Willis et al. do not disclose or suggest generating a schedule based on the filtered articles, the Examiner points out “that the claim language does not exactly recites [*sic*] ‘generating a schedule based on the filtered articles.’” Examiner’s Answer, page 43. Similarly, with respect to Appellants’ argument that Willis et al. do not disclose or suggest providing its portal information responsive to search criteria, the Examiner points out “that claim language of claims 1, 18, and 19 does not explicitly recite . . . “*providing portal information responsive to search criteria*.” Examiner’s Answer, page 46. While the claims do not require generating a schedule based on filtered articles and do not require providing portal information responsive to search criteria, the claims do require generating a schedule from results of the searching of a plurality of media distribution source types based on search criteria. The Examiner relies on the filtered articles of Willis et al. as assertedly disclosing the searching of the plurality of media distribution source types. Therefore, for Willis et al. (or Williamson et al.) to disclose or suggest the searching and the generating of a schedule from results of the searching, as the claims require, Willis et al. (or Williamson et al.) would have to disclose or suggest a searching using search criteria, which searching provides the filtered articles of Willis et al., and would

also have to disclose generating a schedule based on the filtered articles, which Willis et al. (and Williamson et al.) do not. (In fact, Willis et al. do not disclose any schedule generated for display.) In other words, the Examiner cannot rely on the filtered articles of Willis et al. for disclosing the feature of media content from a plurality of media distribution source types, and then completely ignore the Examiner's reliance on the filtered articles when discussing other features of the claims which make reference to the media content of the plurality of media distribution source types.

Indeed, with respect to the feature of providing a schedule, the Examiner appears to rely on Williamson et al. as assertedly disclosing this feature (while reliance on Willis et al. is apparently for the feature of presenting a page with information of different media distribution source types.) However, as the Examiner admits and as noted above, a schedule provided by Williamson et al. is not of results of a search of a plurality of media distribution source types. Neither Williamson et al. nor Willis et al. disclose or suggest providing a schedule for the filtered articles of Willis et al. upon which the Examiner relies as disclosing the media content of a plurality of distribution source types, and therefore do not disclose or suggest the feature of generating, from results of searching a plurality of media distribution source types for media content, a schedule including scheduling information regarding the media content.

Specifically, even if the system of Williamson et al. would be modified based on the features of Willis et al. of providing a portal page including data from multiple distribution sources, such a modified system would not provide the features of generating a schedule from results of searching a plurality of media distribution source types, in which the schedule includes scheduling information regarding the media content from the plurality of media distribution source types, as provided for in claims 1, 18, and 19. Instead, the modified system would at most provide a portal in which obtained articles, one of which may include a television program schedule, are filtered in accordance with user preferences and then provided to the user in portal frames in accordance with the information category to which the obtained articles belong. That is, the modified system may merely include a conventional television program schedule among the portal frames, but would not include a schedule including scheduling information from the plurality of media distribution source types.

Indeed, the applied references do not include any suggestion to further modify the systems of Williamson et al. and Willis et al. to provide the features of claims 1, 18, and 19 according to which, in response to a search request, a schedule is generated including

scheduling information regarding media content from a plurality of media distribution source types, which, as noted above, often are scheduled in different manners.

With respect to the remainder of the Examiner's discussion in the Examiner's Answer regarding claims 1, 18, and 19, the Examiner repeats arguments the Examiner previously made, all of which have already been addressed by Appellants in the Appeal Brief.

Accordingly, the combination of Williamson et al. and Willis et al. does not disclose or suggest all of the features recited in any of claims 1, 18, and 19, and therefore does not render unpatentable any of claims 1, 18, and 19 or their dependent claims, e.g., claims 2 to 15, 20, and 23 to 25, claim 21, and claims 22, respectively.

As further regards claims 8, 23, and 25, Appellants presented additional respective arguments for each of those claims in the Appeal Brief, which arguments are not discussed in the Examiner's Answer.

Claim 16 includes subject matter analogous to that of claims 1, 18, and 19. Claim 16 and its dependent claim 17 are therefore patentable for at least the same reasons set forth above in support of the patentability of claims 1, 18, and 19.

Claim 27 relates to a computer-implemented method for searching for media content and recites, *inter alia*, the following:

. . . responsive to a request for media content suggestions, periodically: searching by a processor for media content of a plurality of media distribution source types, the searching being in accordance with a user viewing history.

In the Final Office Action, the Examiner refers to paragraph 84 of Williamson et al. as assertedly disclosing a viewing history. However, the cited paragraph refers to categorization of a user's reserved programs and is unrelated to a viewing history. Indeed, the cited section merely seeks to aid a user in locating programs based on categories. Thus, Williamson et al. do not disclose or suggest a user viewing history, as provided for in the context of claim 27.

In the Examiner's Answer, the Examiner refers instead to paragraph 4 of Willis et al. as assertedly disclosing this feature. However, the cited paragraph refers to offering items having characteristics similar to those of previously purchased books and DVDs. Those items are not indicated to be media content of a plurality of distribution source types. Indeed, Willis et al. do not disclose or suggest searching for media content of a plurality of distribution source types in accordance with a user viewing history.

Accordingly, the combination of Williamson et al. and Willis et al. does not disclose or suggest all of the features of claim 27, so that the combination of Williamson et al. and Willis et al. does not render unpatentable claim 27.

Reversal of this obviousness rejection of claims 1 to 25 and 27 is therefore requested.

Claim 26 stands rejected under 35 U.S.C. § 103 as unpatentable over the combination of Williamson et al., Willis et al., and U.S. Patent Application Publication No. 2002/0154157 (“Sherr et al.”). It is respectfully submitted that the combination of Williamson et al., Willis et al., and Sherr et al. does not render unpatentable claim 26 for at least the following reasons.

Claim 26 relates to a computer-implemented method for searching for media content and recites, *inter alia*, the following:

. . . generating, . . . from results of the searching, a results page including: a first section having generic information of the results that applies to all of the media distribution source types from which the results were obtained and not including information that is specific to any one of the media distribution source types; and for each of the media distribution source types from which the results were obtained, a respective second section having information specific to the respective media distribution source type, including all of the results obtained from the respective media distribution source type.

In the Final Office Action, the Examiner refers to sections 820, 825, 830, 835, 840, and 850 of figure 8 of Willis et al. as assertedly disclosing the recited first section. However, as explained in the Appeal Brief, the referenced sections are discrete sections, each one including information specific to its respective source. The combination of the sections thus does not include information generic to all of the media distribution source types and does include information specific to each separate media distribution source type. Thus, the referenced sections, whether viewed alone or in combination, do not disclose a section having generic information that applies to all of the media distribution source types from which the results were obtained and not including information that is specific to any one of the media distribution source types, as provided for in the context of claim 26.

Indeed, in the Final Office Action at page 46, the Examiner admits that “Williamson in view of Willis does not explicitly teach the limitation: ‘a fist [*sic*] section having generic information of the results that applies to all of the media distribution source types from which the results are obtained and not including information that is specific to any one of the media distribution source types.’”

The Examiner therefore, in the Advisory Action, refers to figure 9 and par. 94 of Sherr et al. as assertedly disclosing the recited first section. However, as explained in the Appeal Brief, Sherr et al. merely indicate a page containing focused information about a single content item (movie) from a single media distribution source. *See* Sherr et al., par. 92. Further, Figure 9 of Sherr et al. contains additional information specific to the single content item from the single media distribution source. *See* Sherr et al., par. 93. Thus, the referenced sections, whether viewed alone or in combination, do not disclose a section having generic information that applies to all of the media distribution source types from which the results were obtained and not including information that is specific to any one of the media distribution source types, as provided for in the context of claim 26.

In the Examiner's Answer, the Examiner repeats the above reference to Sherr et al. as presented in the Advisory Action, without addressing Appellants' explanation as to the deficiencies of Sherr et al.

In the Appeal Brief, Appellants also explained why the relied upon references do not disclose or suggest the respective second sections recited in claim 26, which the Examiner has not addressed in the Examiner's Answer.

Indeed, it is respectfully submitted that the combination of Williamson et al., Willis et al., and Sherr et al. does not disclose or suggest these features, so that the combination of Williamson et al., Willis et al., and Sherr et al. does not render unpatentable claim 26.

Reversal of this rejection of claim 26 is therefore respectfully requested.

Claim 29 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Williamson et al., Willis et al., and U.S. Patent Application Publication No. 2002/0078382 ("Sheikh"). It is respectfully submitted that the combination of Williamson et al., Willis et al., and Sheikh does not render unpatentable claim 26 for at least the following reasons.

Claim 29 includes subject matter analogous to that of claim 1. Claim 29 is therefore allowable for at least essentially the same reasons as claim 1, since Sheikh does not correct the critical deficiencies of the combination of Williamson et al. and Willis et al. noted above in support of the patentability of claim 1.

Moreover, claim 29 provides additional features which, as Appellants explained in the Appeal Brief, the combination of Williamson et al., Willis et al., and Sheikh does not disclose or suggest. The Examiner has not addressed Appellant's argument in the Examiner's Answer.

Reversal of this rejection of claim 29 is therefore respectfully requested.

For at least the reasons indicated above and for the reasons more fully set forth in the Appeal Brief, Appellants respectfully submit that the relied upon references do not disclose or suggest Appellant's inventions as recited in the claims of the above-identified application. Accordingly, it is respectfully submitted that the inventions recited in the claims of the present application are new, non-obvious, and useful.

For the foregoing reasons and for the reasons more fully set forth in the Appeal Brief, it is respectfully submitted that the final rejections of the pending claims should be reversed.

Respectfully submitted,
KENYON & KENYON LLP

Dated: January 25, 2010

By: /Aaron Grunberger/
Aaron Grunberger
Registration No. 59,210
One Broadway
New York, New York 10004
(212) 425-7200
CUSTOMER NO. 26646